Michigan Chapter, Docs 4 Patient Care Testimony

Health Policy Committee-Gail Haines Chairperson

State House of Representatives

January 19th 9am Thursday

Discussion on Insurance Exchanges.

Thank you Chairwoman Haines and members of the Committee. My name is Dr Rob Steele. I am here representing not only the Michigan Chapter of Docs 4 Patient Care, an organization that places the Physician-Patient relationship at the center of any medical care reform, but also my current and future patients. I graduated from the University Of Michigan Med School over 30 years ago, and have served on the clinical faculty of the Medical Schools at Washington University in St Louis, and the University of Michigan. I began in the private practice of medicine in Michigan 25 years ago.

On November 10, 2011, one year after an election where many of our lawmakers campaigned on a promise to protect Michigan from the Patient Protection and Affordable Care Act, the Michigan Senate passed SB693, establishing a PPACA-compliant health insurance exchange in Michigan and appropriating $9.8 million in federal funding towards this experiment. Some Senators voted against the bill, yet voted to accept the federal funding to establish exchanges. The Senators then passed Senate Resolution 95 declaring the PPACA unconstitutional, basically announcing they had just violated their oaths by passing an unconstitutional bill establishing exchanges in Michigan.

As practicing physicians and health care professionals focused on true health care reform that maintains the doctor-patient relationship, we strongly oppose the

insurance exchanges, and thePPACA. Insurance exchanges are the infrastructure for federal dictates used to, enforce and implement the individual mandate and associated regulations, and to a massive expansion of the underfunded Medicaid mandate the State of Michigan cannot afford.

Conversations with those who support the exchanges suggest they have not had the opportunity to review parts of PPACA and subsequent regulations sufficiently to fully understand what exchanges mean for Michigan, and how little control Michigan will have in this scheme. In these conversations we have identified three main points of confusion that must be addressed. We thank the Committee for showing a bipartisan interest in gathering more information.

The first misunderstanding is that creating our own exchange will allow us local control and that a Michigan exchange will somehow differ significantly from a federal exchange. Acceptance of federal funding will necessarily have federal strings, leaving us as puppets controlled by a massive federal bureaucracy. Even without funding, the law passed by the Michigan Senate minimizes any chance for local control. Conversely, the law clearly binds Michigan to the federal mandates. SB693 can be distilled down to one important sentence:

The Marketplace shall do all of the following:

"Perform all duties and obligations of an exchange required by the federal Patient Protection and Affordable Care Act."

This merely agrees what Health and Human Services has made clear: states may set up an exchange and call it whatever they want, but it will in no way exempt them from federal control. I quote from the Federal Register:

> *Each State electing to establish an Exchange* ***must adopt the Federal standards*** *contained in this law and in this proposed rule, or have in effect a State law or regulation that implements these Federal standards. Section 1311(k) further specifies that* ***Exchanges may not establish rules that conflict with or prevent the application of regulations promulgated by the Secretary.***"
> http://www.gpo.gov/fdsys/pkg/FR-2011-07-15/pdf/2011-17610.pdf

The first set of standards that a Michigan exchange much comply with was released this past summer...244 pages with a 103 page supplement. "Require" appears 811 times and "Must" shows up 580 times, making clear the HHS bureaucracy's ability to set coverage, control price, and determine which doctors and hospitals may participate based on their compliance with the regulations of the federal bureaucracy. Leeway and waivers from these standards are unlikely. Michigan was recently refused a waiver, and neighboring Governor Mitch Daniels in Indiana was refused a waiver to continue the state's highly successful Medicaid reforms.

A second concern is that the federal government will take over our insurance market and establish "one-size-fits-all" federal exchanges if the state fails to act. Unfortunately, as discussed, passing the exchange is what actually implements "a one size fits all". All states will be complying with the same federal regulations, regardless of a "US" or "MI" prefix. The state has nothing to lose by putting the

risk and responsibility for implementation onto the federal government. Neither the political will, nor funding are available for federal implementation of exchanges and have them operational on time.

The pressure put on states to establish exchanges may also be tied to a little-publicized 'glitch' in the 'pass it to find out what's in it' PPACA. Because of the high cost federal mandates on the exchanges the price of insurance will increase significantly. Knowing this, PPACA tried to hide this increased expense from patients and voters by giving generous federal subsidies toward the purchase of insurance from the State exchanges. The 'glitch' comes where the law stipulates federal subsidies can only be used in state, but not federal exchanges. Without federal cash, the high price of the exchange product is apparent and consumers may find it cheaper to pay the penalties and not participate. Federal pressure on states to establish exchanges is a simple way to cover up the legislative malpractice committed by Congress when voting on a law they had not read.

The third argument is that exchanges are a good idea for Michigan regardless, independent of PPACA. Some supporters describe exchanges as "free-market" or "conservative". Absent federal regulations I believe Michigan could come up with an innovative exchange, and perhaps we should. I had never heard it discussed by the Michigan legislature previously, so it appears the sudden interest in exchanges is related directly to PPACA and all the bureaucratic mandates.

We practice medicine based on evidence and accountability. With exchanges being imposed on every state, surely there must be evidence for their effectiveness. Unfortunately the answer is no, making PPACA exchanges an expensive and risky experiment. In medicine, this is called Research, and requires informed consent from the patient and the decision to participate is voluntary and reserved to the

patient--a patient's 10th amendment so to speak. Massachusetts and Utah are the only states with exchanges. We can assume the escalating costs and decreased availability of care in Massachusetts is not an experiment we want to replicate in Michigan, unfortunately Utah does not fare well either. Not only does the Utah exchange not qualify as a PPACA exchange, it also has dismal participation and more expensive insurance. Given data that 30-50% of employers will drop health coverage under PPACA and force employees into the exchange bureaucracy, these employees, voters and taxpayers, will find proven false the claim they could keep their insurance if they liked it. Overwhelming opposition to this legislation shows that Michiganders have not given their informed consent to participate in this research.

Michigan is one of 26 states challenging PPACA before the Supreme Court. Federal judges have actually stated that any action to accept federal monies or develop an exchange undermines the arguments made in the lawsuit joined by Michigan Attorney General Bill Schuette. Attorney General Schuette has made it clear that Michigan should wait on exchanges until after the presidential election, and at minimum, should wait until after the Supreme Court case. We support his opinion and applaud his efforts in this lawsuit.

The doctors and health care professionals of Docs 4 Patient Care are dedicated to preservation of the doctor-patient relationship. Our primary concern is the health and well-being of our patients. An additional concern, by extension, is the health and well-being of our state and country— both physical and fiscal health. The Patient Protection and Affordable Care Act neither protects patients, nor leads to affordable care. Rather than addressing the fundamental causes of increased cost including lack of true competition in the insurance industry, isolation of physicians

and patients from the true costs of health care, distortions in the tax code and lack of malpractice reform--the PPACA either ignores, or aggravates them by limiting choices of insurance, increasing regulation and centralizing decision making.

Insurance exchanges are the mechanism by which the most liberty threatening federal provisions will reach the states. The majority of Americans, including doctors, recognizes this and opposes any further implementation of this health care law. If the Michigan legislature continues on this path towards a PPACA-compliant exchange, they will deservedly receive a share of the blame and the citizen's anger for the harm this misguided legislation will cause. In the words of the Hippocratic Oath, the first responsibility is to "Do No Harm".

Thank you for your time and consideration in this matter, and congratulations on the example you have set for the Houses of Representatives in Washington DC and other states while you have carried out your work efficiently, and discussed your disagreements in a respectful and adult manner.